HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) No. 2648 of 2007

PETITIONER : Ashok Kumar Engle S/o Shri Narayan Rao Engle Aged about 50 years R/o 88/2, Nehru Nagar East, Bhilai Nagar, Tahsil & District Durg (C.G.)

VERSUS

RESPONDENTS : 1. K.Raju S/o K.Guruwaiya Aged about – 52 years, R/o Shastri Nagar Camp No. 1 Bhilai Nagar, Tahsil & District – Durg (Chhattisgarh)

2. The Branch Manager Punjab National Bank, Behind Vijay Talkies, Whole Sale Fruits Market, Bhilai Nagar, District – Durg (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri.

Present: Shri Santosh Yadu, Advocate for the petitioner.

ORDER

(Passed on 2nd day of May, 2007)

1. By this petition, the petitioner seeks quashing of sale notice published in news paper by respondent no. 2, till disposal of the civil suit pending before the Court below.

2. The brief facts, in nutshell are that the petitioner filed a suit for declaration and mandatory injunction against the respondents in respect of suit house wherein, according to the petitioner, he has been residing for four years, alongwith an application under order 39 Rule 1 and 2 of the Code of Civil Procedure (hereinafter referred to

as "the Code"). The 12th Additional District Judge, (Fast Track Court) Durg, dismissed the said application on 17.10.2006.

3. Being aggrieved, the petitioner preferred a miscellaneous appeal no. 1026/2006 (Ashok Kumar Engle Vs. K.Raju and another) in this court. The said miscellaneous appeal was dismissed on 07.12.2006 as withdrawn with a liberty to file a fresh application under Order 39 Rule 1 and 2 of the Code, after depositing the entire amount outstanding with the Punjab National Bank, Bhilai Nagar, Durg.

4. The petitioner, without depositing the entire amount outstanding with the respondent no. 2 as per order dated 7.12.2006, preferred one more application under section 151 of the Code of Civil Procedure, seeking for the same relief as sought for in the earlier application under Order 39 Rule 1 and 2 of the Code. The Court below held that the similar relief sought for in the earlier application, filed under Order 39 Rule 1 and 2 of the Code, was dismissed and the second application under section 151 of the Code is not maintainable. The petitioner was granted liberty by this Court in Miscellaneous Appeal No. 1026/2006, subject to depositing of entire amount with the respondent no. 2 to file a fresh application for the same relief. The petitioner filed the application under some other provision i.e. section 151 of the Code of Civil Procedure for the same relief. He is not entitled to any relief as the relief sought for in application under Order 39 Rule 1 and 2 of the Code was already rejected on

17.10.2006 and the miscellaneous appeal filed against the said order being M.A. No. 1026/2006 was also dismissed as withdrawn by this Court with liberty, subject to some conditions.

5. Once the application seeking for the same relief has been rejected that cannot be re-agitated under some other provision. The recourse to filing the application under section 151 of the Code is misuse of judicial process and the same was rightly rejected.

6. There is no infirmity, illegality or irregularity in the order as to call for indulgence of this Court in its extraordinary jurisdiction.

7. Thus, for the reasons stated above, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Amit